

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

MIKE NUMSEN and PAUL H. KING,)	
)	
Appellants,)	PCHE No. 89-40
)	
v.)	
)	
PUGET SOUND AIR POLLUTION)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,)	CONCLUSIONS OF LAW
)	AND ORDER OF DISMISSAL
)	
Respondent.)	

This appeal contests Puget Sound Air Pollution Control Agency's ("PSAPCA") issuance No. 6926, assessing \$500 for alleged violation of Section 8.02(3) or Regulation I for burning unlawful material on December 27, 1986, in Kirkland, Washington. The Pollution Control Hearings Board held a hearing on July 25, 1989, starting at 2:20 p.m. at the Board's office in Lacey, Washington. Board members present were: Judith A. Bendor, presiding, and Harold S. Zimmerman.

Appellant Mike Numsen appeared pro se, representing himself only. Appellant Paul H. King did not appear.

1 Attorney Keith D. McGoffin of McGoffin and McGoffin, represented Puget
2 Sound Air Pollution Control Agency.

3 A court reporter affiliated with Gene Barker & Associates
4 recorded the proceedings. Witnesses were sworn and testified.
5 Exhibits were admitted and examined. Argument was made.

6 From the foregoing, the Board has deliberated and makes these

7 FINDINGS OF FACT

8 I

9 Paul H. King, an attorney, owns real property located at 10044 -
10 126th Avenue NE, in Kirkland, Washington.

11 Mike Numsen, with the permission of Paul King, parked cars and a
12 trailer on the property. These were on the property on December 27,
13 1988, the day in question. Mr. Numsen was not living at the property.

14 II

15 PSAPCA is a municipal corporation with authority to conduct a
16 program of air pollution prevention and control in an area which
17 includes Kirkland. The Pollution Control Hearings Board recognizes
18 and takes notice of PSAPCA's Regulation I, including Article 8, which
19 deals with causing or allowing outdoor fires.

20 III

21 On December 27, 1988, a lieutenant with the Kirkland Fire
22 Department noticed a large column of black smoke rising from a fire at
23 10044 126th Avenue NW. The pile was at least 10 feet across by 3
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6 FINAL FINDINGS OF FACT, CONCLUSIONS
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1 feet high. It contained burning garbage, tires, painted lumber and
2 steel scraps. Nearby were two, five gallon containers, one plastic
3 and one metal, containing a residue of flammable material which
4 smelled like gasoline or kerosene. The fire department put out the
5 fire. No one else was on the property.

6 IV

7 The fire department contacted PSAPCA. An inspector went to the
8 site and from there to the Kirkland Fire Department offices. The
9 Department provided the inspector with the name and address of the
10 property owner. The department also provided the name of Mike Numsen
11 alleged to be the renter of the trailer on the property.

12 V

13 On January 3, 1989, PSAPCA received copies of fire department
14 affidavits regarding the incident.

15 On January 5, 1989, PSAPCA sent Notice of Violation No. 025323 by
16 certified mail to Paul H. King and Mike Numson (sic.) alleging
17 violation of Regulation I, Article 8, Section 8.02(3) for causing or
18 allowing a fire containing prohibited material.

19 On March 17, 1989, PSAPCA sent Notice and Order of Civil Penalty
20 No. 6926 by certified mail to the same individuals, assessing Paul H.
21 King and Mike Numsen a fine of \$500.

22 VI

23 On April 3, 1989, a one-page Notice of Appeal was filed (see
24

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26 FINAL FINDINGS OF FACT, CONCLUSIONS
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(3)

1 attached) at the Board. Its heading using a legal format was:

2 KING COUNTY SUPERIOR COURT
3 Notice of Appeal No. 6926

4 Puget Sound AIR POLLUTION)
CONTROL AGENCY, Plaintiff,)

5 vs.)

6 Mike Numson)
7 &)
Paul H. King,)

8 Defendants.)
9

10 The appeal was allegedly from Mike Numsen, and had the hand-written
11 initials: M.N., with his name typed below it. His name was spelled
12 two different ways in the filing. The appeal filing was supposedly on
13 behalf of himself and Paul H. King.

14 In fact, Mr. Numsen did not sign, send, or authorize the sending
15 of the appeal. He had not even seen it until the hearing.

16 VII

17 On April 20, 1989 the Pollution Control Hearings Board sent a
18 letter to the "appellants" and respondent PSAPCA stating that an
19 appeal had been filed and scheduling the July 25, 1989 hearing at the
20 Board's office.

21 On July 21, 1989, Paul King filed a letter with the Board
22 addressed to Attorney McGoffin stating that:

23 I will not be able to attend the hearing scheduled
24 07/25/89 2:15 pm as I will be out of town, Mike Numsen,
25 the tenant is scheduled to appear and has knowledge of

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1 the situation. Our knowledge is limited to the
2 complaint.

3 PAUL KING

4 Jm

5 VIII

6 At the hearing Mike Numsen represented only himself. Appellant
7 Attorney King did not appear nor did he request a continuance.

8 IX

9 During the hearing, when the April 3, 1989 "appeal" letter was
10 testified to, that Mr. Numsen had not appealed (Finding of Fact VI,
11 above), respondent PSAPCA moved to dismiss the case for lack of
12 jurisdiction. The Board deferred ruling and received the remaining
13 evidence.

14 X

15 Any Conclusion of Law which is deemed a Finding of Fact is hereby
16 adopted as such.

17 From these Findings of Fact, the Board enters the following

18 CONCLUSIONS OF LAW

19 I

20 Regulation I, Section 8.02(3)(a) states in pertinent part:

21 (a) It shall be unlawful for any person to cause or
22 allow any outdoor fire containing garbage, dead animals,
23 asphalt, petroleum products, paints, rubber products,
24 plastics or any substances other than natural vegetation
25 which normally emits dense smoke or obnoxious odors.

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II

The Washington Clean Air Act, Chapt. 70.94 RCW, is a strict liability statute. PSAPCA's Regulation I Section 8.04 is an implementing regulation of the Act, and it, too imposes strict liability.

III

Property owners are in general, prima facie responsible for unlawful fires on their property. Regulation I, Section 8.04(b). Property owners who allow unattended piles of burnable debris to accumulate are said to have invited a fire to be started. Paul King v. PSAPCA, PCHB No. 88-59. Such prpoerty owners have "allowed" an unlawful fire.

Under the facts here, Paul. H. King has allowed an unlawful fire in violation of Regulation I, Section 8.02(3).

IV

Under the law, a maximum penalty of \$1,000 is allowed. The \$500 penalty assessed is eminently reasonable. RCW 70.94.431(1).

The goal of civil penalties is to promote future compliance. Mr. King was previously found to have allowed an unlawful fire on March 22, 1988. King v. PSAPCA, supra. (Order issued December 15, 1988).

V

There is no evidence that Mr. Numsen had any role whatsoever regarding the fire. We so state having had the opportunity to observe

FINAL FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER OF DISMISSAL

1 his demeanor. Mr. Numsen has not caused or allowed the fire. Section
2 8.02(3)(a).

3 VII

4 The Pollution Control Hearings Board, however, does not have
5 jurisdiction over this appeal. Mr. Numsen's purported "Notice of
6 Appeal" was not filed by him. Mr. King did not file any appeal of the
7 Notice of Civil Penalty No. 6926 within the statutory 30 days. RCW
8 43.21B.300. Neither did he appear at the hearing a request for
9 continuance.


10 Therefore, PSAPCA's Motion to Dismiss should be GRANTED.
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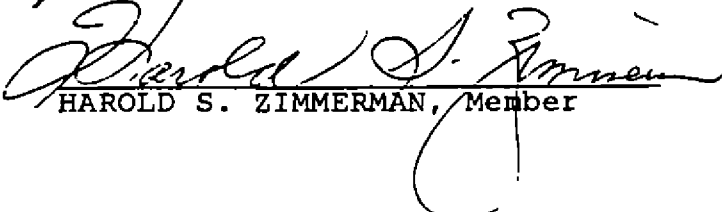
ORDER

PSAPCA's Motion to Dismiss the appeal of Penalty Order No. 6926
is GRANTED.

DONE this 29th day of September, 1989.

POLLUTION CONTROL HEARINGS BOARD


JUDITH A. BENDOR, Presiding


HAROLD S. ZIMMERMAN, Member

Attachment: "Notice of Appeal"

FINAL FINDINGS OF FACT, CONCLUSIONS
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(8)

KING COUNTY SUPERIOR COURT

APR 3 1988

Puget Sound Air
Pollution Control Agency)
Plaintiff,)

NOTICE OF APPEAL

vs.)

NO. 2926

Mike Numson)
&)
Paul H. King)
Defendants.)

1. The appellant is Mike Numsen, appealing for himself
and Paul King, address 10044 126th Avenue Northeast, no phone.

2. Address, 10044 126th Avenue Northeast, Kirkland,
Washington 98033.

3. Copy of order enclosed.

4. The order is unjust in that the fine is too high and
no material, that was disallowed was burned.

5. Dismissal of the case.

6. The material that was alleged to be burned was not
burned

I believe the foregoing to be true.

Dated: March 28, 1988.

M N

Mike Numsen